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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDERSON PENN, JR.,

Defendant and Appellant.

F077461

(Super. Ct. No. MCR046220)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Mitchell C. Rigby, Judge.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Peña, J. and DeSantos, J.

Appointed counsel for defendant Anderson Penn, Jr., asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Finding no arguable error that would result in a disposition more favorable to defendant, we affirm.

BACKGROUND

On September 26, 2016, defendant was convicted by guilty plea of resisting an officer (Pen. Code, § 69;¹ count 1), being a felon in possession of a firearm (§ 29800, subd. (a)(1); count 2), and possessing methamphetamine for sale (Health & Saf. Code, § 11378; count 5). Defendant admitted having suffered a prior drug conviction within the meaning of Health and Safety Code section 11370.2, subdivision (c).

On November 9, 2016, the trial court sentenced defendant to five years eight months in prison, as follows: 16 months on count 5, three consecutive years for the prior drug conviction enhancement, eight consecutive months on count 1, and eight consecutive months on count 2.

On February 27, 2018, defendant filed a petition for resentencing pursuant to section 1170.18, referring to his enhancement under Health and Safety Code section 11370.2, subdivision (c).

On March 19, 2018, the trial court denied the petition on the ground that defendant's section 69 conviction was ineligible for resentencing under section 1170.18.

On May 2, 2018, defendant filed a notice of appeal.

We agree that defendant was not eligible for resentencing pursuant to section 1170.18. As for the prior drug conviction enhancement under Health and Safety Code section 11370.2, subdivision (c), the newly amended statute does not apply to

¹ All statutory references are to the Penal Code unless otherwise noted.

defendant. (Stats. 2017, ch. 677, § 1.) Because he never appealed the original 2016 judgment, his judgment became final well before the amendment took effect on January 1, 2018. (See *In re Estrada* (1965) 63 Cal.2d 740, 742 [a defendant whose judgment is not yet final may take advantage of a change in the law that reduces the punishment for a particular offense]; *People v. Millan* (2018) 20 Cal.App.5th 450, 455 [judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari with the United States Supreme Court expires].)

Having undertaken an examination of the entire record, we find no evidence of ineffective assistance of counsel or any other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The trial court's order denying defendant's petition for resentencing pursuant to Penal Code section 1170.18 is affirmed.